

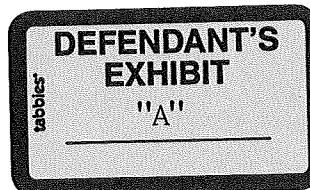
IN THE COURT OF COMMON PLEAS OF BLAIR COUNTY,  
PENNSYLVANIA

DARLENE SMITH and GARY SMITH, her husband,	)	CIVIL ACTION – LAW
Plaintiffs,	)	NO.: 2010 GN 3357
v.	)	
BRIDGESTONE RETAIL OPERATIONS, LLC t/d/b/a FIRESTONE COMPLETE AUTO CARE,	)	CODE:
Defendant.	)	JURY TRIAL DEMANDED

**COMPLAINT IN CIVIL ACTION**

AND NOW, come the Plaintiffs, Darlene Smith and Gary Smith, her husband, by and through their attorneys, Henry H. Wallace, Esquire and Nathaniel B. Smith, Esquire, and file this COMPLAINT IN CIVIL ACTION against the Defendant upon causes of action, of which the following are a statement.

1. Plaintiffs Darlene Smith and Gary Smith are husband and wife, who reside at 501 West Allegheny Street, Apartment 1, Martinsburg, Pennsylvania 16662.
2. Defendant Bridgestone Retail Operations, LLC t/d/b/a Firestone Complete Auto Care is a corporation (hereinafter called "Firestone Complete Auto Care"), whose principal place of business is located at 333 East Lake Street, Bloomington, Illinois with a registered agent in Pennsylvania named National Registered Agents, Inc., with an address of 200 West Adams Street, Chicago, Illinois 60606.
3. At all times relevant hereto, Defendant Firestone Complete Auto Care was engaged in the sales and service of automobile tires and related equipment in the Commonwealth of Pennsylvania, in Blair County.



4. On January 30, 2008 Plaintiff, Darlene Smith, purchased a "Firestone Tire Package" containing two (2) new Firestone FR380 tires at the Defendant's location of 181 Sierra Street, Altoona, Pennsylvania 16601. A copy of Defendant's invoice is attached hereto and marked Exhibit "A."

5. At all times relevant hereto, the Defendant Firestone Complete Auto Care was engaged in the business of marketing and selling tires, such as and including those sold to Plaintiff.

6. On or about June 30, 2008, the left rear tire that Plaintiff had purchased from Defendant went flat. Defendant repaired it for no charge. A copy of Defendant's invoice is attached hereto and marked Exhibit "B."

7. On or about September 14, 2008, Plaintiffs were riding in their blue 2005 Chevrolet Impala with the tires purchased from Defendant installed on the rear wheels, when the right rear tire malfunctioned causing the vehicle to rollover, causing serious personal injury to Plaintiff Darlene Smith.

**COUNT I - STRICT LIABILITY**

**DARLENE SMITH and GARY SMITH, her Husband**  
**v.**  
**BRIDGESTONE RETAIL OPERATIONS, LLC t/d/b/a**  
**FIRESTONE COMPLETE AUTO CARE**

8. Plaintiffs hereby incorporate by reference thereto all the allegations contained in paragraphs one (1) through seven (7), inclusive to the same force and effect as if the same were set forth herein at length.

9. At all times relevant hereto, the aforementioned right rear tire was being used in a manner reasonably foreseeable by Defendant.

10. The aforesaid right rear tire was expected to and did reach the ultimate consumer, Plaintiff, Darlene Smith, in the defective condition in which it was sold.

11. At all times relevant hereto, Defendant knew or should have known that the right rear tire was defectively dangerous and could cause serious or fatal injuries to a person occupying a motor vehicle on which it was mounted.

12. The Defendant is liable to Plaintiffs in this cause of action based upon the theory of strict liability as set forth in §402(a) of the Restatement (Second) of Torts for the following reasons:

- a. In selling a defective tire;
- b. In selling said tire, which malfunctioned during its intended use;
- c. In failing to recall and/or retrofit or otherwise remedy its dangerously defective tire;
- d. In failing to provide notification to users of the potential hazard inherent in the use of its defective tire;
- e. In selling said tire which was dangerously defective in that it would not perform and protect people from injury as safely as an ordinary consumer would expect;
- f. In selling said tire without all elements and warnings necessary to make it safe;
- g. In selling said tire with elements, which made it unsafe; and
- h. In failing to do everything necessary to make its tire safe for its intended use.

13. In addition, Defendant is strictly liable to Plaintiffs on a cause of action as set forth in the Restatement (Second) of Torts, §402(b), in that it made to Plaintiffs through advertising and other means, misrepresentations of material facts concerning the character and quality of the aforesaid tire at a time when the Defendant was engaged in the business of selling said tires.

14. Plaintiffs relied upon said misrepresentations and as a result suffered the injuries and damages set forth in this Complaint.

15. Said violations of §§402(a) and (b), where the legal and proximate cause of the injuries sustained by, Plaintiff, Darlene Smith, as more specifically set forth herein below.

16. Said violations of §§402(a) and (b), where the legal and proximate cause of the damages suffered presently and will continue into the future by, Plaintiff, Gary Smith, as follows:

- a. Loss of the services of his Wife, Plaintiff, Darlene Smith;
- b. Loss of the society of his Wife, Plaintiff, Darlene Smith;
- c. Loss of consortium with his Wife, Plaintiff, Darlene Smith; and
- d. Lost ability to depend on his Wife for all transportation needs (i.e, employment, groceries, healthcare provider appointments, etc.), of their family; such need existing due to Husband Plaintiff, Gary Smith's advanced age.

17. In said accident of September 15, 2008, Plaintiff Darlene Smith sustained cervical fractures at C6 and C7, which required surgical fusion thereof. She also sustained torn ligaments in her back, nerve damage to her right arm and hand, torn ligaments, and injuries to her knees, all of which caused her to be hospitalized, undergo surgery, suffer from post-traumatic stress syndrome, loss of sleep, nightmares, physical pain, mental suffering and anxiety, loss of wages from employment and loss of the enjoyment of life's pleasures in the past, present and into the future.

18. As a result of the aforesaid accident, Plaintiff Darlene Smith has incurred medical bills in excess of Fifty Five Thousand Dollars (\$55,000.00).

WHEREFORE, Plaintiffs demand compensatory damages from the Defendant in an amount in excess of Fifty Thousand Dollars (\$50,000.00), together with interest and costs of suit.

**A JURY TRIAL IS DEMANDED.**

**COUNT II - BREACH OF WARRANTY**

**DARLENE SMITH and GARY SMITH, her Husband**  
**v.**  
**BRIDGESTONE RETAIL OPERATIONS, LLC t/d/b/a**  
**FIRESTONE COMPLETE AUTO CARE**

19. Plaintiffs incorporate by reference thereto all of the allegations contained in paragraphs one (1) through eighteen (18) inclusive to the same force and effect as if the same were set forth herein at length.

20. Defendant represented and warranted to the ultimate users and consumers of its tires, that they were fit for the purpose for which they were intended.

21. In addition, Defendant also warranted that said tires were of a merchantable quality and safe for use.

22. Defendant breached its implied warranties of fitness for a particular purpose, merchantability, as well as express warranties that their tires are safe for use on Plaintiff's automobile.

23. The personal injuries sustained by Plaintiffs were the direct and proximal result of Defendant's breach of said warranties.

WHEREFORE, Plaintiffs demand compensatory damages from the Defendant in an amount in excess of Fifty Thousand Dollars (\$50,000.00), together with interest and costs of suit.

**A JURY TRIAL IS DEMANDED.**

**COUNT III - NEGLIGENCE**

**DARLENE SMITH and GARY SMITH, her Husband**  
**v.**  
**BRIDGESTONE RETAIL OPERATIONS, LLC t/d/b/a**  
**FIRESTONE COMPLETE AUTO CARE**

24. Plaintiffs incorporate by reference thereto all of the allegations contained in paragraphs one (1) through twenty-three (23), inclusive to the same force and effect as if the same were set forth herein at length.

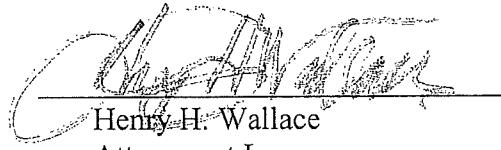
25. Defendant also failed to take into consideration the failure of its left rear tire and to identify and analyze its risks and hazards; and the predictability of the failure of its right rear tire only two and one-half months thereafter.

26. The Defendant Bridgestone Retail Operations, LLC t/d/b/a Firestone Complete Auto Care acted in a careless, reckless, dangerous, and negligent manner as set forth herein above, thereby causing Plaintiffs' injuries and damages and in violating the laws, regulations and standards of the United States of America and the Commonwealth of Pennsylvania.

WHEREFORE, Plaintiffs claim compensatory damages of Defendant in an amount in excess of Fifty Thousand Dollars (\$50,000.00), together with interest and costs of suit.

**A JURY TRIAL IS DEMANDED.**

Respectfully submitted,



Henry H. Wallace  
Attorney at Law

436 Blvd. Of the Allies, Suite 500  
Pittsburgh, PA 15219  
(412) 391-6666

PA I.D. #: 1077



Nathaniel B. Smith, Esquire  
Stoehr & Smith, LLC  
Allegheny Professional Centre  
1798 Plank Road, Suite 304  
Duncansville, PA 16635

PA I.D. #: 34277

Re-Printed on 09/23/2008 10:33 AM

ALTOONA, PA. 16601

## DUPLICATE INVOICE

SMITH, DARLENE  
RR 2  
BOX 138  
MARTINSBURG, PA 16662-9655  
814.614.4092 Or 814.215.6166

2005 CHEVROLET IMPALA [BLUE]  
V6-201 3.4L OHV  
Lic #: GMX1326 PA Vin #:  
In: 01/05/08 12:37PM Mileage: 91,587  
Out: 01/05/08 1:42PM

Store # 019046

## RETAIL SALE

Description	Article Number	ID	Qty	Unit Price	Extended Price	Job Total
<b>FIRESTONE TIRE PACKAGE</b>		03				227.74
062008 FR380 BL P225/60R16 97S 55,000 Mile Limited Warranty	062008	09TN	2	84.99	169.98	
DOT# E2X038B3307						
DOT# E2X038B4007						
TIRE FEE	7017671	09NN	2	1.00	2.00	
NEW TIRE WHEEL BALANCE PARTS	7018708	09TN	2	1.09	2.18	
NEW TIRE WHEEL BALANCE LABOR	7018716	09TS	2	9.90	19.80	
NEW RUBBER VALVE STEM	7007902	09TN	2	1.99	3.98	
7059005 PROTECT TIRE REPAIR & REPLACEMENT PLAN	7059005	09TN	2	11.90	23.80	
TIRE DISPOSAL FEE (1)	7075078	09TN	2	3.00	6.00	
TIRE INSTALLATION	7015016	09TS	2	N/C	N/C	
<b>TIRE ROTATION</b>		03				10.00
TIRE ROTATION	7015032	09TS	2	5.00	10.00	
<b>ALIGNMENT SERVICE</b>		03				69.99
Symptom:-						
ALIGNMENT SERVICE	7004578	09TS	1	69.99	69.99	
<b>INSPECTION</b>						
FROM PRIOR INSPECTION						

## Technician(s):

09 ROBERT MCNALLY

## Payment History:

Visa	8395	332.43	030120
Total Tendered		332.43	

## Summary:

Parts	199.94
Labor	107.79
Shop Supplies	5.99
Sub-Total	313.72
Tax (6.00%)	18.71

Total	\$332.43
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I have received the above goods and/or services. If this is a credit card purchase, I agree to pay and comply with my cardholder agreement with the issuer.

Rev	
Amt	
Init	

## Revision History:

01/05/2008 01:12PM IN PERSON SMITH, DARLENE

78.64

Customer Signature

Initial here to indicate you have received the  
Tire Maintenance Warranty Book.

*All parts are new unless otherwise specified.*



See

reverse side for Warranty

Information

Re-Printed on 09/23/2008 10:33 AM

## DUPLICATE INVOICE

SMITH, DARLENE  
RR 2  
BOX 138  
MARTINSBURG, PA 16662-9655  
814.614.4092 Or 814.215.6166

2005 CHEVROLET IMPALA [BLUE]  
V6-201 3.4L OHV  
Lic #: GMX1326 PA Vin #:  
In: 06/30/08 9:49AM Mileage: 104,891  
Out: 06/30/08 10:42AM

Store #019046

## RETAIL SALE

Description	Article Number	ID	Qty	Unit Price	Extended Price	Job Total
PROTECT PLAN NO CHARGE REPAIR		01				
LEFT REAR						
ROAD HAZARD FLAT REPAIR	7001123	09TS	1	N/C	N/C	
STANDARD 5W30 OIL CHANGE - UP TO 5 QUARTS		01				25.49
OIL CHANGE LABOR	7029718	09TS	1	9.00	9.00	
TF47 OIL FILTER	7058122	09TN	1	3.99	3.99	
USED FILTER RECYCLING CHARGE	7075051	09TN	1	2.50	2.50	
5W30 GT-1 SYNTHETIC BLEND OIL	7029734	09TN	5	2.00	10.00	

## INSPECTION

CUSTOMER REQUESTED NO INSPECTION

## Technician(s):

09 ROBERT MCNALLY

## Payment History:

Visa	0385	27.02	084151
Total Tendered		27.02	

## Summary:

Parts	13.99
Labor	11.50
Shop Supplies	0.00
Sub-Total	25.49
Tax (6.00%)	1.53

Total	\$27.02
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I have received the above goods and/or services. If this is a credit card purchase, I agree to pay and comply with my cardholder agreement with the issuer.

Rev	
Amt	
Init	

## Revision History:

06/30/2008 10:24AM IN PERSON SMITH, DARLENE

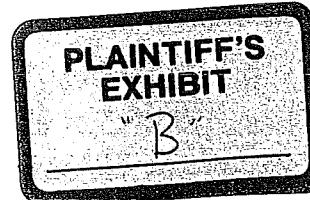
27.02

Customer Signature

All parts are new unless otherwise specified.

I acknowledge notice and oral approval of an increase in the original estimated price.

Signature or Initials



TELL US ABOUT YOUR EXPERIENCE AND RECEIVE \$10 OFF YOUR NEXT PURCHASE OF \$25 OR MORE!

- 1) For a short survey Call 1-800-859-9203 or logon to www.FirestoneSurvey.com; enter code 019046-124812;
- 2) Write redemption code here: \_\_\_\_\_ . Offer expires 6 months from date of invoice, good at all participating locations. Must have valid redemption code. May not be combined with any other offer or to reduce existing debt. No copies accepted.

COMMITTED TO PROVIDING A POSITIVE CUSTOMER EXPERIENCE

See

reverse side for Warranty

Information

VERIFICATION

I am the Plaintiff in this matter and am represented by counsel. I have furnished to my counsel factual information upon which the foregoing is based. To the extent that it is based on the factual information provided to counsel, I verify that those facts are true and correct to the best of my knowledge, information and belief. However, the language is that of counsel and, to the extent that it goes beyond the factual information which I have provided to counsel, I have relied upon counsel in making this verification.

I understand that false statements herein are made subject to the penalties of 18. Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

Date:

8/25/10

✓ Darlene Smith